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In the Matter of the Compensation of  
**DANIEL R. VANNI, Claimant**  
WCB Case No. 13-02154, 13-00377, 12-02325  
ORDER ON REVIEW  
Unrepresented Claimant  
Reinisch Wilson Weier, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

Claimant, *pro se*,<sup>1</sup> requests review of those portions of Administrative Law Judge (ALJ) Mills's order that: (1) upheld the self-insured employer's denial of his new/omitted medical condition claim for a mild traumatic brain injury and post-concussive syndrome under a February 2009 injury claim; (2) upheld the employer's denial of his new/omitted medical condition claim for a left thumb mucous cyst and IP joint osteoarthritis under the February 2009 claim; (3) upheld the employer's denial of his new/omitted medical condition claim for left hip trochanter bursitis under an August 2009 injury claim; and (4) upheld the employer's denial of his new/omitted medical condition claim for an L4-5 disc herniation under the August 2009 claim. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.<sup>2</sup>

At the outset, we acknowledge claimant's arguments that his hearings had been delayed or postponed for several years without his approval, and that the February 2, 2016 hearing was unreasonably set "within 30 days" after he had reported that he was representing himself. Yet, notices of hearing for the

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<sup>1</sup> Inasmuch as claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers, whose job it is to assist injured workers in such matters. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

DEPT OF CONSUMER & BUSINESS SERVICES  
OMBUDSMAN FOR INJURED WORKERS  
PO BOX 14480  
SALEM OR 97309-0405

<sup>2</sup> We acknowledge claimant's arguments referring to the employer's claim processing of medical bills. However, the issue at hearing and on review is limited to a July 2011 Notice of Closure (addressed in a separate order issued today) and the employer's above-referenced denials. (Tr. 49). On review, we are limited to the record developed at hearing. ORS 656.295. To the extent that claimant's arguments address matters that are not documented in the record, they have not been considered.

February 2, 2016 date of hearing were sent twice, on November 19, 2015, and on December 3, 2015. Therefore, claimant had “[a]t least 60 days’ prior notice of the time and place” of the February 2, 2016 hearing. ORS 656.283(4)(a).<sup>3</sup>

On review, claimant emphasizes that he sustained a severe work-related injury in February 2009 (WCB Case No. 13-00377) that resulted in (among other things) a concussion injury, as well as an August 2009 work-related injury (WCB Case No. 12-02325). He contends that, because he did not have left hip or low back pain before his February 2009 and August 2009 work injuries, his left hip and L4-5 disc conditions are compensable under either the February 2009 or August 2009 injury dates.

Claimant has the burden of proving that an injury is compensable. ORS 656.005(7). To establish the compensability of his new/omitted medical condition claims, he must establish that the claimed conditions exist. *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005). Additionally, he must establish that his work-related injury incident is a material contributing cause of the disability or need for treatment for the claimed condition. *See Jean M. Janvier*, 66 Van Natta 1827, 1832-33 (2014), *aff’d without opinion*, 278 Or App 447 (2016) (applying the *Brown* definition of an “otherwise compensable injury” to new/omitted medical condition claims under ORS 656.266(2)(a)); *see also Brown v. SAIF*, 262 Or App 640, 652 (2014) (an “otherwise compensable injury” means the “work-related injury incident”). However, for “consequential conditions,” claimant must prove that his compensable injury is the major contributing cause of the claimed conditions. *English v. Liberty Northwest Ins. Corp.*, 271 Or App 211, 214 (2015) (the work-related injury incident must be the major contributing cause of the consequential condition).<sup>4</sup> Because of the possible alternative causes for claimant’s conditions, resolution of the compensability

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<sup>3</sup> We note that the motions for postponement were made by both parties (both jointly and separately, when claimant was represented by counsel), and postponements were granted for various reasons (including claimant’s changes in representation of counsel, consolidation of hearings to address new issues/claims, and attempts to settle), as well as due to claimant’s lack of representation by counsel. To the extent that claimant takes issue with actions taken by his former attorneys on his behalf, we lack the authority to address such issues. If claimant has a disagreement with his former attorneys’ actions, that disagreement may be a matter for another forum to resolve. *See David M. Williams*, 63 Van Natta 346 (2011); *Joseph M. Deprizio*, 60 Van Natta 488 (2008); *Becky L. Degenhardt*, 54 Van Natta 1189 (2002) (the Board is not the appropriate forum for determining the adequacy of counsel).

<sup>4</sup> A consequential condition is “a separate condition that arises from the compensable injury, for example, when a worker suffers a compensable foot injury that results in an altered gait that, in turn results in back strain.” *Fred Meyer, Inc. v. Crompton*, 150 Or App 531, 536 (1997).

determination is a complex medical question that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279 (1993); *Linda E. Patton*, 60 Van Natta 579, 582 (2008).

As explained below, the medical evidence does not support the compensability of claimant's denied claims for left hip trochanter bursitis or an L4-5 disc herniation under either his February 2009 or his August 2009 injury dates. The medical evidence also does not support the compensability of his claims for post-concussive syndrome, left thumb mucous cyst, or IP joint osteoarthritis under his February 2009 claim.

The employer accepted claimant's February 2009 injury claim for a concussion, right rib contusions, facial abrasions, left thumb metacarpal base comminuted articular fracture, left thumb metacarpal shaft fracture, cervical sprain, thoracic sprain, and lumbar sprain. (Exs. 11, 32, 58).<sup>5</sup> It subsequently accepted additional conditions of C5-6 disc protrusion/herniation/radiculitis/radiculopathy and left thumb post-traumatic CMC joint osteoarthritis. (Exs. 68, 99, 123).

The employer denied claimant's new/omitted medical condition claims for left hip ischial bursitis and an L4-5 disc herniation related to the February 2009 injury. (Exs. 31, 34, 91, 100). Those denials were not appealed and became final. The employer also denied claimant's new/omitted medical condition claim for post-concussive syndrome. (Exs. 103, 108). In doing so, the employer's denial expressly noted that claimant's new/omitted medical condition claim for a mild traumatic brain injury was synonymous with the accepted concussion condition. (Ex. 108). Finally, the employer denied the compensability of claimant's left thumb mucous cyst and IP joint osteoarthritis conditions. (Ex. 122).

Claimant's August 2009 injury claim was accepted for a left gluteal strain. (Ex. 37). The employer denied claimant's new/omitted medical condition claims for left hip trochanter bursitis and an L4-5 disc herniation related to his August 2009 injury. (Exs. 70, 75, 91, 101).

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<sup>5</sup> A July 2011 Notice of Closure for those conditions awarded 2 percent "whole person" impairment for the left thumb. (Ex. 59). An October 28, 2011 Order on Reconsideration increased claimant's award to 6 percent "whole person" impairment for the left thumb/hand and lumbar spine. (Ex. 67).

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February 2009 Injury Claim

Claimant requested acceptance of a mild traumatic brain injury and post-concussive syndrome. (Ex. 103).<sup>6</sup> The employer denied compensability of the post-concussive syndrome, but expressly noted that the claimed “mild traumatic brain injury” was synonymous with the previously-accepted concussion. (Ex. 108). At hearing, the employer explained that the “mild traumatic brain injury” was encompassed in its acceptance of a concussion, which was processed to closure and evaluated for permanent impairment. (See Exs. 59, 67; Tr. 18-21). Drs. Binder and Schock explained that a “mild traumatic brain injury” was synonymous with claimant’s accepted concussion under his February 2009 claim. (Exs. 105-14-16, 107-2). They also explained that claimant did not have the claimed “post-concussive syndrome” condition. (*Id.*) Because the medical evidence does not establish the existence of the claimed post-concussive syndrome, claimant has not established the compensability of that condition. See *Graves*, 57 Van Natta at 2381.

In addition, we agree with the ALJ’s conclusion that the evidence establishes that the “mild traumatic brain injury” is encompassed in the employer’s acceptance of the claim for a concussion. (Exs. 11, 108).<sup>7</sup> See *Warren D. Duffour*, 64 Van Natta 619, 623-24, *recons*, 64 Van Natta 795 (2012) (medical evidence established that the carrier’s acceptance of a traumatic brain injury reasonably apprised the claimant and medical providers that the newly claimed encephalopathy and concussive head injury conditions were synonymous with, and encompassed in, the accepted condition).

Further, the employer denied compensability of claimant’s left thumb mucous cyst and IP joint osteoarthritis conditions. (Ex. 122). Although Dr. Verheyden initially attributed those conditions to claimant’s February 2009 injury, he later reviewed additional medical records and explained that the left thumb IP joint osteoarthritis predated that injury and caused the mucous cyst to develop over time. (Exs. 110, 147, 151). Dr. Verheyden acknowledged that

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<sup>6</sup> Although claimant’s request for acceptance referred to both the February 2009 and the August 2009 injury claims, the medical evidence does not attribute a brain/head injury to the August 2009 injury, and claimant does not contend otherwise.

<sup>7</sup> Claimant’s entitlement to medical treatment and the employer’s claim processing obligations related to the accepted concussion remain unchanged, in accordance with law.

the February 2009 injury may have contributed to the preexisting IP joint osteoarthritis, but concluded that the February 2009 injury was not the major contributing cause of the claimed conditions. (Ex. 151). There is no other medical opinion supporting the compensability of these conditions. Therefore, claimant has not met his burden of proving the compensability of his left thumb mucous cyst and IP joint osteoarthritis conditions. *English*, 271 Or App at 214.

### August 2009 Injury Claim

As previously noted, the employer denied claimant's new/omitted medical condition claims for left hip trochanter bursitis and an L4-5 disc herniation under his August 2009 injury claim. (Exs. 70, 75, 91, 101). The ALJ found that claimant did not have the claimed left hip trochanter bursitis condition, and did not establish compensability of the L4-5 disc herniation as related to his August 2009 injury. Based on the following reasoning, we agree with the ALJ's conclusion.

Drs. Ford and Tarbet, as well as Dr. Kaesche (who examined claimant at the employer's request), opined that claimant did not have the claimed left hip trochanter bursitis. (Exs. 73-16-17, 74-2, 93-1, 102-2). Instead, they explained that claimant's left hip symptoms were in the gluteal/ischial regions. (*Id.*) Because claimant must establish the existence of the claimed left hip trochanter bursitis, and because the medical evidence does not support the existence of that condition, claimant fails to meet his burden of proof. *Graves*, 57 Van Natta at 2381.

With regard to claimant's new/omitted medical condition claim for the L4-5 disc herniation, we note that Dr. Moore did not attribute his disability/need for treatment for the L4-5 disc herniation to his August 2009 injury. (Exs. 157, 160, 161, 166). Instead, Dr. Moore opined that the L4-5 disc protrusion/herniation, and need for treatment, was directly related to claimant's February 2009 injury. (Exs. 157, 159, 160, 161).<sup>8</sup> Additionally, Drs. Ford, Kaesche, and Tarbet did not attribute claimant's disability/need for treatment of the L4-5 disc condition to either the February 2009 injury or the August 2009 injury. (*See* Exs. 92, 93, 94, 102). Thus, the medical evidence does not establish that claimant's L4-5 disc herniation is compensable under his accepted August 2009 injury claim.

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<sup>8</sup> As previously noted, the employer's denial of the L4-5 disc herniation under the February 2009 injury claim was not appealed and, therefore, is final. (Ex. 100).

In sum, the medical evidence does not establish the compensability of claimant's new/omitted medical condition claims for post-concussive syndrome, left thumb mucous cyst, and IP joint osteoarthritis under his February 2009 injury claim, or an L4-5 disc herniation and left hip trochanter bursitis under his August 2009 injury claim. Consequently, we affirm.

ORDER

The ALJ's order dated February 29, 2016 is affirmed.

Entered at Salem, Oregon on November 7, 2016